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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/549,953

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Achim Ansmann

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EXAMINER

SOROUGH, LAYLA

ART UNIT

PAPER NUMBER

1617

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PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/549,953	<b>Applicant(s)</b> ANSMANN ET AL.	
	<b>Examiner</b> LAYLA SOROUGH	<b>Art Unit</b> 1617	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 30 June 2008.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 17,21-25,30,31 and 33-35 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 17,21-25, 30-31,33-35 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

### **DETAILED ACTION**

The Office Action is in response to the Applicant's reply filed June 30, 2008 to the Office action mailed on December 31, 2007.

Applicant's arguments over 35 U.S.C. 112, second paragraph are not persuasive. However, in view of applicant's amendments the rejection of record is herewith withdrawn.

Applicant's arguments over 35 U.S.C. 102(b) as being unpatentable over Culpon, Jr. (US 5,156,759), of record of claims 17, 22-25, 31 and 33 are not persuasive. However, in view of applicant's amendments the rejection of record is herewith withdrawn.

Applicant's arguments over 35 U.S.C. 102(b) as being unpatentable over Gordon (US 4,534,963), of record of claims 17-20, 22, 24, 26, 27, 29-33, 35, 36 and 37 are not persuasive. However, in view of applicant's amendments the rejection of record is herewith withdrawn.

Applicant's arguments over 35 U.S.C. 103(a) as being unpatentable over Gordon (US 4,534,963), of record of claims 23 and 34 are not persuasive. However, in view of applicant's amendments the rejection of record is herewith withdrawn.

Applicant's arguments over 35 U.S.C. 103(a) as being unpatentable over Gordon (US 4,534,963) in view of Biatry et al. (US 2003/0125378), of record of claims 21 and 28 are not persuasive. However, in view of applicant's amendments the rejection of record is herewith withdrawn.

In view of Applicant's amendments the following rejections are now made:

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 17,22-25,30,31 and 33-35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gordon (US 4,534,963) in view of Flick, E.W. ((1991). Cosmetics Additives - An Industrial Guide. William Andrew Publishing/Noyes).

Gordon teaches cosmetic compositions comprising polyolefins such as dodecene-1 and fatty esters such as octyl palmitate, isopropyl palmitate, isopropyl myristate and others, in the claimed amounts and proportions. See col. 4, lines 29-47; col. 5, lines 35-49; Examples. The compositions may contain additional emollients such as triglycerides. See col. 5, lines 49-68. The compositions of Gordon do not contain mineral oil. See Examples.

The reference does not explicitly teach the claimed kinematic viscosity of the polyalphaolefin nor the ethyl hexyl cocate.

However, determination of optimal or workable viscosity of the oils by routine experimentation is obvious absent showing of criticality of the claimed parameter. One having ordinary skill in the art would have been motivated to do this to obtain the desired rheological properties of the composition.

Further, Flick teaches PEG-60 Lanolin (ethyl hexyl cocoate) is a mild water soluble lanolin with emollient, conditioning and super fatting properties. Efficient solubilizer. Typical use levels 1-10%.

It would have been obvious to one of ordinary skill in the art at the time of the invention to incorporate the PEG-60 Lanolin into the composition of Gordon et al. The motivation to make such an incorporation is because Flick teaches PEG-60 Lanolin (ethyl hexyl cocoate) is a mild water soluble lanolin with emollient, conditioning and super fatting properties. Efficient solubilizer in cosmetics. Hence, a skilled artisan would have reasonable expectation of successfully producing a cosmetic which has mild water soluble lanolin with emollient, conditioning and super fatting properties. Efficient solubilizer.

Claim 21 is rejected under 35 U.S.C. 103(a) as being unpatentable over Gordon (US 4,534,963) and Flick, E.W. ((1991). Cosmetics Additives - An Industrial Guide. William Andrew Publishing/Noyes), as applied to claims 17,22-25,30,31 and 33-35 are above, and further in view of Biatry et al. (US 2003/0125378).

Gordon and Flick are as applied above.

Gordon does not teach the hydrogenated polyalfaolefin of Claim 21 or the Guerbet alcohols of Claim 28 as additional emollients. However, Biatry et al. teach using hydrogenated polyalfaolefins for the same purpose as non-hydrogenated polyalfaolefins in cosmetic compositions. See [0042]. Therefore, it would have been *prima facie* obvious to one having ordinary skill in the art at the time the invention was

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made to modify the compositions of Gordon such that to use hydrogenated polyalphaolefin oil instead of non-hydrogenated polyalphaolefin oil. One having ordinary skill in the art would have a reasonable expectation of obtaining the same cosmetic effect as set forth in the Gordon reference because these oils are used interchangeably for the same art-recognized purpose as suggested by Biatry et al. Selection of a known material based on its suitability for its intended use is obvious absent a clear showing of unexpected results attributable to the applicant's specific selection. See e.g., *In re Leshin*, 227 F.2d 197, 125 USPQ 416 (CCPA 1960). With respect to Claim 28, Biatry et al. teach using fatty alcohols such as octyldodecanol, in cosmetic compositions for their art-recognized purpose. See [0037], [0043]. Therefore, it would have been *prima facie* obvious to one having ordinary skill in the art at the time the invention was made to modify the compositions of Gordon such that to use fatty alcohols such as octyldodecanol, of Biatry et al. with a reasonable expectation of obtaining the desired emollient effect and/or consistency of the composition.

### ***Response to Arguments***

Applicant main argument is that the Gordon reference does not teach the ethyl hexyl cocate. Applicant's arguments have been considered but are moot in view of the new ground(s) of rejection. Additionally, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge

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generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, it would have been obvious to one of ordinary skill in the art at the time of the invention to incorporate the PEG-60 Lanolin into the composition of Gordon et al. The motivation to make such an incorporation is because Flick teaches PEG-60 Lanolin (ethyl hexyl cocoate) is a mild water soluble lanolin with emollient, conditioning and super fatting properties. Efficient solubilizer in cosmetics. Hence, a skilled artisan would have reasonable expectation of successfully producing a cosmetic which has mild water soluble lanolin with emollient, conditioning and super fatting properties.

The arguments are not persuasive and the rejection is made **FINAL**.

Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

### ***Conclusion***

No claims allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Layla Soroush whose telephone number is (571)272-5008. The examiner can normally be reached on Monday through Friday from 8:30 a.m. to 5:00 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sreenivasan Padmanabhan, can be reached on (571) 272-0629. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/SREENI PADMANABHAN/

Supervisory Patent Examiner, Art Unit 1617